Supreme Court, U.S.
FILED

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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

RICHARD BRUN, PETITIONER

V.

COMMONWEALTH OF KENTUCKY, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF KENTUCKY

PETITION FOR WRIT OF CERTIORARI

Vincent, Alig & Nageleisen
Donald L. Nageleisen, Esq.
115 Park Place
Covington, Ky. 41011
(606) 491-7800

COUNSEL FOR PETITIONER
COUNSEL OF RECORD

51 pp

QUESTIONS PRESENTED

A. WHETHER THE DECISION OF THE KENTUCKY SUPREME COURT, WHICH ADOPTED THE WRITTEN OPINION OF THE KENTUCKY COURT OF APPEALS AND THE LOWER COURTS OF KENTUCKY REGARDING THE RELIABILITY OF ANONYMOUS INFORMANTS/TIPS, IS CONTRARY TO BOTH FEDERAL CASE LAW AND KENTUCKY CASE LAW.

B. WHETHER THE DECISION OF THE KENTUCKY SUPREME COURT TO NOT REVIEW OR CHANGE THE PRIOR WRITTEN OPINION OF THE KENTUCKY COURT OF APPEALS WAS IN ERROR DUE TO THE FACT THE KENTUCKY COURT OF APPEAL'S DECISION WAS BASED UPON A SUMMARY OF INCORRECT CRITICAL FACTS WHICH WERE USED AS THE DETERMINING FACTOR IN HOW THE CASE WAS DECIDED AT THE COURT OF APPEALS LEVEL.

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Delaware v. Prouse, 440 U.S. 648, 99 S. Ct, 1391 (1979)

Terry v. Ohio, 392 U.S. 1 (1968)

Brown v. Texas, 443 U. S. 47 (1979)

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OCTOBER TERM, 1994

RICHARD BRUN, PETITIONER

V.

COMMONWEALTH OF KENTUCKY, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF KENTUCKY

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Richard Brun, respectfully prays that a Writ of Certiorari issue to review the Judgment and Opinion of the Supreme Court of Kentucky, entered on February 16, 1994.

OPINION BELOW

The Opinion of the Supreme Court of Kentucky, affirmed the Opinion of the Kentucky Court of Appeals, which after having granted Petitioner's Motion for Discretionary Review and having heard oral arguments, then incorrectly recited the facts of the case and concluded that the police officer, under the facts and circumstances of this case, had reasonable and articulable suspicion to stop the Petitioner's vehicle based upon an anonymous tip for suspicion of Driving Under the Influence of Alcohol.

JURISDICTION

The Supreme Court of Kentucky decided the instant case on February 16, 1994 as set forth in Appendix.

The jurisdictional requirement of this

court is invoked pursuant to Rule 10 of the United States Supreme Court under Sections (b) and (c) which state, in pertinent part, as follows:

(b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals.

(c) When a state court or a United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court.

CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides in pertinent

part:

> The right of the people to be secured in their persons, houses, papers, and effects, against unreasonable searches and seizure, shall not be violated, and no warrants shall issue, but upon probable cause .....

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> ..... [N] or shall any State deprive any person of life, liberty, or property, without due process of law .....

STATEMENT OF THE CASE

On March 27, 1992, at approximately 2:30 in the morning, a City of Southgate (Ky.) Police Officer overheard a police

dispatch from another adjoining city in the Northern Kentucky Area, namely the dispatcher from the City of Ft. Thomas (Ky.), over his police radio scanner. At the time, the Ft. Thomas Police dispatcher was in the process of advising the Ft. Thomas Police officers who were on duty at the time in the City of Ft. Thomas that a vehicle with a "possible intoxicated person or driver" with a blue satin jacket was about to get into his car and leave the area of the Oasis Tavern, located in Southgate, Ky., in a newer model silver car. It seems the Ft. Thomas Police Dispatcher had received this information from an anonymous person who had called from a pay phone at a service station located within the City of Ft. Thomas, Ky. The service station located in the adjoining City of Ft.

Thomas was approximately one mile away from the Oasis Tavern. This unidentified caller indicated he had traveled from the area of the Oasis Tavern to the Ameristop Store\Gas Station before contacting the Ft. Thomas Police Dispatcher and reporting what he had observed. In reference to the anonymous caller, the dispatcher was not made aware of the following vital information which could be used to determine the reliability of the anonymous tip:

1) Any identifying information regarding the anonymous caller including his name, if he had ever supplied reliable tips in the past, how he happened to be in the area on this occasion at this hour of the morning, how close he was in relation to viewing the alleged perpetrator, what type of car he

was driving, etc.

2) Any information that the so-called intoxicated person actually did get into the newer-model silver car and did, in fact, drive upon the road [caller indicated was about to], or;

3) Any identifying information regarding the vehicle in question (i.e. make, model, year, license plate number, etc.) other than the fact it was newer and silver, or;

4) A description (i.e. age, hair color, length of hair, height, mustache, beard, weight, build, clothes, etc.) of the intoxicated person about to get into the vehicle, other than the fact he was white and had a blue satin jacket on at the time [which the Petitioner did not], or;

5) Length of time it had taken for

the caller to have traveled to the pay phone in the City of Ft. Thomas and what route he had taken which is critical to the timing element, or;

6) The number of traffic lights or stop signs the caller may have encountered on the way to the Ameristop before placing the call to the Ft. Thomas Police [also critical to time element], or;

7) Whether the caller had the appropriate change to place a phone call or whether he had to look up the number of the Ft. Thomas Police Department in the local telephone directory [also critical to time element] or;

8) Any other pertinent information pertaining to the period of time between his alleged initial observation of the intoxicated person about to get into a

silver car in the vicinity of the Oasis Tavern and the actual phone call being placed, received and then dispatched by the Ft. Thomas Police, or;

9) At no time did the anonymous caller did not advise the Ft. Thomas dispatcher as to the direction of travel (north or south) in which the vehicle was proceeding on U. S. 27, which is a four-lane highway; or if the alleged vehicle appeared to be turning up any of the numerous side streets, or;

10) At no time did the anonymous caller indicate how close he was to the vehicle when he made his observations, nor did the caller mention anything about the alleged silver vehicle being small, large or painted in two-tone silver [which was the color of the Petitioner's vehicle].

However, it was based upon this information, in part, that the Southgate Police Officer determined he had reasonable or articulable suspicion to make a routine traffic stop of the Petitioner's silver vehicle--which he passed going in the opposite direction on a four-lane highway known as U.S. Route 27. The police officer relied heavily upon the fact that he was within 50 yards of the Oasis Tavern when he initially heard the dispatch call and observed the silver vehicle driven by what appeared to be a white person. The police officer then made an immediate U-turn in the middle of a four lane highway in an effort to get behind the vehicle. Upon catching up with the Petitioner's vehicle at a traffic light approximately one mile away, the police officer decided to pull

up alongside the vehicle rather than behind the vehicle. Upon observing a white caucasian behind the wheel of this silver car with a "dark colored coat on" [Petitioner was wearing a mid-length black leather coat] the police officer testified that he felt he had cause "to make a routine traffic stop" [direct quote from police officer].

In summation, the police officer testified that the routine traffic stop was justified under the circumstances--due to the close proximity of his cruiser at the time of hearing the dispatch call, the time of the day (2:30 a.m.), the alleged fact there were no other silver cars and a minimum amount of traffic on the highway, and his observation of a white caucasian driver with a dark colored coat on at the time he sat beside

the Petitioner's vehicle at the stop light. Unbeknownst to the police officer, however, was a witness who came forward and testified at the suppression hearing that he was in a newer-model silver vehicle [not two-tone like Petitioners] and directly behind the police officer at the traffic light on U.S. Route 27.

The Petitioner was later charged with Driving Under the Influence, First Offense. A conditional plea of guilty was entered at the District Court level, with the understanding that the constitutionality of the stop would be taken before the higher courts for proper determination. The Campbell County Circuit Court affirmed the Campbell County District Court decision. A Motion for Discretionary Review was filed

in the Kentucky Court of Appeals and was granted, with oral arguments having been heard. The Court of Appeals then made an erroneous decision based upon an improper understanding of the facts. The Court of Appeals incorrectly stated that the police officer in question observed some bad driving in the form of weaving prior to making the decision to pull over the Petitioner's vehicle for a routine traffic stop, and thus under the circumstances, had reasonable or articulable suspicion to pull over the Petitioner's car for a "routine traffic stop". This assumption was totally without merit, incorrect, and critical to the Petitioner's argument. The alleged weaving occurred after the police officer made the decision to stop the vehicle for the "routine traffic stop" [direct

quote]. Despite being made aware of the improper assertion of facts by the Court of Appeals, the Supreme Court of Kentucky decided not to grant discretionary review of the case.

REASONS FOR GRANTING THE WRIT

A. THE DECISION OF THE KENTUCKY SUPREME COURT, WHICH ADOPTED THE WRITTEN OPINION OF THE KENTUCKY COURT OF APPEALS REGARDING THE RELIABILITY OF ANONYMOUS INFORMANTS/TIPSTERS, IN THIS CASE IS CONTRARY TO BOTH FEDERAL CASE LAW AND KENTUCKY CASE LAW.

B. THE DECISION OF THE KENTUCKY SUPREME COURT TO NOT REVIEW OR CHANGE THE PRIOR WRITTEN OPINION OF THE KENTUCKY COURT OF APPEALS WAS BASED UPON A SUMMARIZATION OF INCORRECT FACTS WHICH WERE CRITICAL AND A DETERMINING FACTOR IN HOW THE CASE WAS ERRONEOUSLY DECIDED AT THE COURT OF APPEALS LEVEL.

In determining whether an informant's

tip establishes reasonable suspicion to make a valid investigatory stop of an automobile under the Federal Constitution's Fourth Amendment, the courts will look to the informant's veracity, reliability, and the basis of the knowledge of the tip; however, a lesser showing as to such matters is required to meet the reasonable suspicion standard versus the probable cause standard for the issuance of a search warrant. Alabama v. White, 496 U. S. 325 (1990) "Reasonable suspicion" is dependent upon the content of the information possessed by the police, its degree of reliability and the quantity and the quality of information provided by the anonymous tipster. Alabama, supra. Thus, if an informant's tip has a relatively low degree of reliability,

more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable. Alabama, supra. Standing alone, something more than an anonymous tip is required to proved the reasonable suspicion necessary to make a valid investigatory stop of a person suspected of criminal activity. Alabama, supra. Furthermore, the courts have held that an anonymous tip seldom demonstrates the informant's basis of knowledge or veracity, so as to warrant a man of reasonable caution in the belief that an investigatory stop is appropriate, given that (1) ordinary citizens generally do not provide extensive recitations of the basis of their everyday observations, and (2) the veracity of persons supplying anonymous

tips is by hypothesis largely unknown and unknowable. Alabama, supra. Courts have also held that it is not unreasonable in a case to consider the independent corroboration by the police officer of significant aspects of the caller's prediction about some facts, which would thereby impart some degree of reliability to the other allegations made by the caller, including the claim that the person is engaged in criminal activity; if the anonymous tip contains a range of details relating not just to easily obtained facts but also to future acts not normally predictable; or where significant portions of the caller's information is verified pursuant to the observations of the police officer. The bottom line is that the courts must look at the "totality of the circumstances" of

each case to determine whether reasonable suspicion has in fact been met, taking all the foregoing factors into account. Alabama, supra.

In Delaware v. Prouse, 440 U.S. 648 (1979). the court held a police officer's stopping of an automobile and detaining the driver in order to check the driver's license and the registration of the automobile constituted an unreasonable seizure under the Fourth and Fourteenth Amendments, where the police officer has no articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, there being no justification for subjecting every occupant of every vehicle on the roads to

a seizure at the unbridled discretion of law-enforcement officials on the basis of a state interest in promoting roadway safety. A police officer's hunch that something is suspicious will not validate a random stop merely to obtain identification or check one's automobile license and thus are invalid. Brown v. Texas, 443 U.S. 47, (1979). Needless to say, all evidence obtained pursuant to an improper stop or seizure is in violation of the Fourth Amendment and Section 10 of the Ky. Constitution and, therefore, must be suppressed pursuant to Terry v. Ohio, 392 U.S. 1 (1968).

More specifically, the Commonwealth of Kentucky, in Graham v. Commonwealth of Ky., 667 S.W. 2d 697 (1983), held that an anonymous tip may supply the basis for the needed probable cause for an

investigatory stop, if, under the circumstances, the anonymous tip is supported with indicia of reliability. [See also Raglin v. Commonwealth of Ky., 812 S.W 2d 494 (1991) and Cook v. Commonwealth, KY., 649 S.W.2d 198 (1983)]

Under the facts of this case one must first analyze the reliability of the anonymous informant's tip under the standards set forth in Alabama v. White, supra. Here's what the police officer knew from the dispatcher in this case [please refer to Appendix A for a Certified Transcription of the Dispatch Log]:

1. A newer-model silver vehicle, size unknown, was leaving the area of Oasis Tavern, direction unknown, and;

2. The driver of the silver

vehicle was a male/white wearing blue satin jacket, and;

3. The anonymous caller had viewed an intoxicated person about to leave the Oasis Parking Lot or that area in a silver car prior to traveling to Ameristop in the adjoining city to call in the information from a pay phone.

Obviously, the information gathered from the anonymous tipster was insufficient, standing alone, to justify the standard of reasonable suspicion to stop the Petitioner's vehicle for a routine traffic stop on this particular night.

One must then look into more detail as to the specifics which were guiding the police officers in Ft. Thomas and Southgate in their search for this individual on this night who was about to

violate the law by driving while alleged to be intoxicated. Once again, the rationalization must turn to what the police officer knew or learned, independent of the anonymous tip, in the short time span when he first observed the a two-tone silver vehicle and got behind it to investigate up to point where he made the decision at the traffic light to pull over the vehicle for a "routine traffic stop". First, the officer still had not learned the name or any other identifying information which would show the informant was reliable on this occasion. Second, the officer still did not have a description on the vehicle (i.e. make, model, year, specific color, license plate number, etc.) other than the fact it was silver. Third, the officer still did not have a verifiable

description of the driver other than the fact he was caucasian (i.e. short, fat, tall, thin, mustache, beard, thinning hair, bald, etc.). Fourth, how could the officer justify the stopping of this particular silver vehicle found within fifty yards of the tavern from "a time perspective" when the informant had to travel approximately one mile, locate necessary change to place a call, possibly look up the phone number for the Ft. Thomas Police Dept. and place the phone call to the adjoining city police dispatcher. Fifth, the informant advised that this caucasian driver of this vehicle had on a blue satin jacket, when the Petitioner had on a black mid-length leather coat. Sixth, since the officer observed no improper driving prior to making the decision to stop the vehicle,

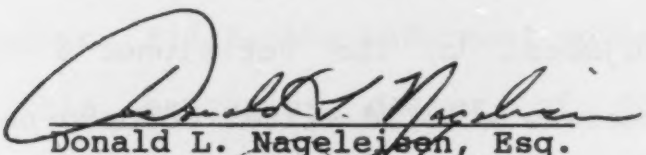
how could he say his reasonable suspicions were in fact verified from the actions of the Petitioner. Based upon the foregoing, the officers strongest argument, and at this point, only verifiable argument, for the stop, would have to be that the two tone silver car driven by the Petitioner was the only car on the road at the hour of 2:30 in the morning. Once again, however, this argument must obviously fail, for the officer's had failed to look into his rear view mirror as he was sitting adjacent to the Petitioner's vehicle, because a solid silver colored-newer BMW was directly behind him as indicated by the in court testimony of said person. The fact of the matter was that this police officer was simply on a fishing expedition in violation of the

Petitioner's rights under the Fourth and Fourteenth Amendments of the United States Constitution.

CONCLUSION

For the foregoing reasons, a Writ of Certiorari should issue to review the Judgment of the Supreme Court of Kentucky. However, since the law is so well-settled and stable, and the decision below is so clearly in error, this Court should grant summary reversal.

Respectfully Submitted,



Donald L. Nageleisen, Esq.
Vincent, Alig & Nageleisen
115 Park Place
Covington, Ky. 41011
(606) 491-7800

APPENDIX

CERTIFIED COPY OF DISPATCH TAPE

D= DISPATCHER

R= RADIO

D: 401

R: 401. GO AHEAD

D: RECEIVED AN ANONYMOUS COMPLAINT REFERENCE A VEHICLE LEAVING U.S. 27 NEAR THE OASIS. SHOULD BE A NEWER MODEL SILVER CAR. DRIVER SHOULD BE WEARING A BLUE SATIN JACKET. HIGHLY 149. GO AHEAD.

R: OKAY. I'M IN FRONT OF HIGHLANDS AT THIS TIME.

D: 16. YOU ANYWHERE IN THE AREA?

R: COUNTRY CLUB. GO AHEAD.

D: NEWER SILVER CAR. MAKE UNKNOWN. SHOULD BE MALE/WHITE DRIVER WEARING A BLUE SATIN JACKET. LEAVING THE OASIS PARKING LOT, OR THAT AREA. INDIVIDUAL HIGHLY "149".

R: ANY DIRECTION OF TRAVEL?

D: UNKNOWN. DOESN'T KNOW IF HE MADE IT TO THE CAR YET OR NOT. CALLER OBSERVED THE INDIVIDUAL STAGGERING. WENT TO AMERISTOP. CALLED FROM A PAY PHONE.

R: I'LL CHECK THIS OUT. COMING UPON THE OASIS.

D: 416 TO STATION -- CHANNEL 6.

R: 16 ON SIX.

D: GO AHEAD.

R: YEAH. WHAT'S A "149"? IS THAT ANYONE "552"?

D: (LAUGHING) THERE YOU GO. SAME THING.

R: IS THIS SUPPOSED TO BE A SMALL, SILVER CAR?

D: QUITE POSSIBLY.

R: OKAY. I'M GETTING ON 471 SOUTH BOUND. I DON'T KNOW IF I'VE GOT THIS VEHICLE IN FRONT OF ME OR NOT.

(LONG SILENCE ON RADIO)

R: 401 TO STATION.

D: GO AHEAD

R: (FIRST WORD NOT LEGIBLE). COPY OUT OF SOUTHGATE. I BELIEVE WE HAVE THE VEHICLE.

R: THAT'LL WORK.

****

COMMONWEALTH OF KENTUCKY)

COUNTY OF KENTON)

AFFIANT, ANNA WALLS, AFTER FIRST BEING DULY CAUTIONED AND SWORN, STATES AS FOLLOWS:

1. THAT SHE IS SECRETARY TO HON. DONALD L. NAGELEISEN, ATTORNEY FOR RICHARD BRUN.

2. THAT THE FOREGOING WAS TRANSCRIBED TO THE BEST OF HER ABILITY FROM THE TAPE PROVIDED TO HER BY THE CAMPBELL COUNTY ATTORNEY'S OFFICE REGARDING SAID RICHARD BRUN.

FURTHER, AFFIANT SAITH NAUGHT.

Anna M. Walls

ANNA WALLS, AFFIANT

SWORN AND SUBSCRIBED BEFORE ME, A NOTARY PUBLIC, BY ANNA M. WALLS, ON THIS THE 5TH DAY OF MAY, 1992.

Mary Jane Gatman

NOTARY PUBLIC, STATE AT LARGE

MY COMMISSION EXPIRES:

1/21/96

COMMONWEALTH OF KENTUCKY
CAMPBELL COUNTY DISTRICT COURT
CASE #: 92-T-01094

COMMONWEALTH OF KENTUCKY

VS.

RICHARD BRUN

DEFENDANT

This cause came before the District Court on May 5, 1992 before the aforementioned judge presiding in the Campbell County District Court, Newport, KY.

The court finding that the Defendant's Motion to Suppress is without merit in that the police officer had reasonable and articulable suspicion to stop the defendant's motor vehicle on the night in question based upon an anonymous tip.

The Defendant then entered a conditional plea of guilty June 9, 1992 with the intent of appealing the decision

to a higher court for just and proper relief.

_____/s/
D. Michael Foellger
Judge Presiding

COMMONWEALTH OF KENTUCKY
CAMPBELL COUNTY CIRCUIT COURT
CASE #: 92-XX-00021

COMMONWEALTH OF KENTUCKY

PLAINTIFF/APPELLEE
VS.

RICHARD BRUN

DEFENDANT/APPELLANT

This is an appeal from the Campbell District Court where the Appellant entered a conditional plea to the offense of driving under the influence of alcohol and the Court overruling his motion to suppress.

The issue presented is whether an anonymous tip and a subsequent radio police dispatch can form the basis for a police officer's articulable and reasonable suspicion to stop appellant's vehicle.

First, probable cause is not the standard by which the stopping of a

vehicle by the police in this case is measured. See, Delaware v. Prouse, 440 U.S. 668, 99 S. Ct. 1391, 59 L. Ed. 2nd 660 (1979). Investigatory stops are proper in those situations in which there is at least articulable and reasonable suspicion that a motorist is subject to seizure for violation of law.

In this case the arresting officer listened to a police dispatch over his police radio scanner. The officer did not hear the voice of an anonymous caller. Based upon an anonymous call to a police department, the dispatcher radioed a message over the radio indicating that a highly intoxicated person was leaving the area of a certain bar. The radio message indicated that the suspect was driving a large silver vehicle and was wearing a coat described

as a "blue satin jacket". At approximately 2:30 a.m., the officer was in the near vicinity of the bar, within 50 yards by his testimony, when he observed a silver vehicle being driven by a male white with a black leather coat coming out of the direction of the bar. The officer testified that at this time, traffic was not heavy and that it was the only silver vehicle on the road at the time.

The officer must be able to articulate something more that a hunch. There must be some minimal level of objective justification for making the stop. See, U.S. v. Ushery, (U. S. District Court for the Eastern District of Kentucky, July, 1992). The police officer had a reasonable suspicion in which to stop the vehicle. It was 2:30 a.mm. in the

morning and there was no significant traffic. The officer was within 50 yards of the bar. Although there was no full description of the vehicle such as license number, sufficient information was given relating to the size of the vehicle, it's color and the individual was wearing a darker colored coat. It should be noted that the report of a silver vehicle being in that area, at that time, was confirmed by finding a vehicle of that color in the same area immediately at the time of the radio broadcast. This court concludes that, given the circumstances of reference to a particular location at a time when traffic was light, thereby creating little doubt as to what vehicle was involved, the indicia of reliability was present to support the anonymous tip.

Accordingly, the Judgment of the Campbell County District Court, in overruling appellant's motion to suppress, be and the same hereby is affirmed.

_____/s/

Leonard L. Kopowski, Judge

Rendered: October 29, 1993
Not To Be Published

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
CASE #: 92-CA-002721-D

RICHARD BRUN

APPELLANT
VS.

COMMONWEALTH OF KENTUCKY

APPELLEE

APPEAL FROM CAMPBELL CIRCUIT COURT
HON. LEONARD . KOPOWSKI, JUDGE
ACTION NO. 92-XX-00021

BEFORE: EMBERTON, GUDGEL, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is an appeal from a conditional guilty plea in which Richard Brun, appellant, was convicted of driving under the influence. Appellant contends the lower court erred in finding that the police officer had a reasonable, articulable suspicion of criminal activity when he stopped appellant. After reviewing the record, we conclude

the lower court's finding was proper.

At approximately 2:30 a.m. on March 27, 1992, Officer Ronnie Gross listened to a Ft. Thomas Police Dispatch over his police radio scanner which advised him that an anonymous call was received that a highly intoxicated, white male was leaving the Oasis on U. S. 27 in Southgate. The male was driving a newer model silver car and should be wearing a blue satin jacket. When Officer Gross received the report, he testified that he was within fifty yards of the Oasis, south bound on U.S. 27. He observed the silver car driven by appellant, a white male, wearing what appeared to be a black leather jacket coming from the direction of the bar. Officer Gross further testified that the traffic was not heavy and that appellant's car was the only

silver vehicle on the road at the time. He followed the appellant's car for a short distance on U.S. 27 and, as appellant proceeded up the ramp to Interstate 471, his car began to weave. Officer Gross activated the emergency lights on his cruiser and stopped the appellant. Appellant failed several field sobriety tests and was arrested on the charges of driving under the influence of alcohol.

At the pre-trial evidentiary hearing, the district court denied appellant's pre-trial motion to suppress the evidence of intoxication. Consequently, on June 9, 1992, appellant entered a conditional pleas of guilty to DUI. Appellant appealed to the Campbell Circuit Court which affirmed the lower court's overruling of appellant's motion to

suppress. IN its order, the circuit court stated that the officer was able to articulate something more than a hunch and he had some justification for stopping appellant's car. This court subsequently granted discretionary review.

As his only assignment of error, the appellant contends that the police officer did not have a reasonable, articulable suspicion when he stopped the appellant based upon an anonymous tip. The appellant claims the DUI charge should have been dismissed because the anonymous tip was unreliable.

This Court has recognized the requirement that stops of a motor vehicle are proper in those situations in which officers have at least articulable and reasonable suspicion of criminal

activity. See Creech v. Commonwealth, Ky. App., 812 S. W@. 2d 162(1991); Graham v. Commonwealth, Ky. App.,, 667 S. W. 2d 697, 698 (1983) (Disc. rev. den. 1984), citing Delaware v. Prouse, 440 U. S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979). Moreover, an anonymous tip may supply the basis for an officer's articulable and reasonable suspicion if supported with indicia of reliability. Graham, supra at 699. Given the circumstances in the case at bar, we believe the stop was proper.

In the case at bar, according to the testimony of Officer Gross, it was 2:30 a.m. and there was no significant traffic in the vicinity of the Oasis Bar and U.S. 27. The officer was within fifty yards of the bar when he heard the police advisory based on an anonymous tip call which stated that a white male, wearing

a blue satin jacket was intoxicated and leaving the bar in a newer silver car. Despite the fact that the officer did not have a full description of the automobile, he did know that it was a newer silver car and that the person was a white male wearing a dark colored jacket. Immediately following the police radio announcement, Officer Gross observed the Appellant, wearing a black jacket, driving away from and within fifty yards of the Oasis Bar. After following appellant, the officer observed appellant's car weave just before he pulled appellant over. When considering this fact with the time of night, location to the bar, and the information provided by the anonymous tip, we believe that these circumstances proved sufficient suspicion for the officer to

stop appellant's vehicle.

Therefore, based upon the aforementioned reasoning, the judgment of the Campbell Circuit Court is affirmed.

All CONCUR.

COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
92-SC-907-D
92-CA-2721

RICHARD BRUN

MOVANT

VS.

COMMONWEALTH OF KENTUCKY

RESPONDENT

APPEAL FROM CAMPBELL CIRCUIT COURT
ACTION NO. 92-XX-00021

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

ENTERED February 16, 1994.

/s/
Chief Justice, Robert Stephens

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

RICHARD BRUN, PETITIONER

V.

COMMONWEALTH OF KENTUCKY, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF SERVICE

Vincent, Alig & Nageleisen
Donald L. Nageleisen, Esq.
115 Park Place
Covington, Ky. 41011
(606) 491-7800

COUNSEL FOR PETITIONER
COUNSEL OF RECORD

I, Donald L. Nageleisen, a member of the Bar of this Court, hereby certify that on the 25th day of May, 1994, the attached Petition for Writ of Certiorari and Appendix were mailed, first class postage prepaid, to Hon. Chris Gorman, Attorney General of the Commonwealth of Kentucky, Capitol Building, Frankfort, Ky. 40601, (502) 564-7600, Counsel for Respondent. I further certify that copies have been served upon John C. Scott, Clerk of Court of Appeals, 403 Wapping Way, Frankfort, Ky. 40601; to Hon. Paul Twehues, Campbell County Attorney, Campbell County Courthouse, Newport, Kentucky 41071; to Hon. Thomas J. Calme, Clerk, Campbell Circuit Court, Campbell County Courthouse, Newport, Kentucky 41071; and to Hon. F. Michael Foellger, Judge, Campbell District Court, Campbell County Courthouse, Newport, Kentucky 41071; and to Hon. Leonard Kopowski, Judge, Campbell Circuit Court, Second Division, Campbell County Courthouse, Newport, Kentucky 41071 and to Hon. Chris Gorman, Attorney General of the Commonwealth of Kentucky, 116 The Capitol Building, Frankfort, Kentucky 40601.

Respectfully submitted,

Donald L. Nageleisen, Esq.
VINCENT, ALIG, & NAGELEISEN
115 Park Place
Covington, Kentucky 41011
(606) 491-7800
COUNSEL OF RECORD